IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.705 OF 2005

1. M/s. Vasu Traders
and Ors. ...Applicants.

V/s

1. Mr. Kirit Dedhia
and ors. ...Respondents.

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Mr. Subhash Jha i/b Law Global for the applicants
Mr. A.S. Shitole, APP for the State.

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CORAM: V.M.KANADE,J.
DATE: 20th April, 2005

P.C.:

1. Heard the learned counsel for the applicants.

2. Applicants are challenging the order of issuance of process passed by the J.M.F.C. at Panvel on a complaint being filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned counsel appearing on behalf of the applicants that the averments made in demand notice are totally different from the pleadings in the complaint. It is further submitted that there are no averments or any allegations against applicant Nos. 2 to 5 that on the date of issuance of cheque, the applicant Nos. 2 to 5 were responsible for day-to-day business of the firm. It is also not

alleged that the cheque was issued by them to the complainant on 3/9/2004. It is further submitted that applicant No.5 was not the partner of the firm at any time as he was a minor and was not concerned with the day-to-day business of the firm. It is further submitted that according to the instructions which were given to the Bank, no cheque would be issued unless two authorized partners sign the cheque. It is submitted that since the cheque bears only one signature, the said cheque itself was incomplete and improper and, therefore, the provisions of section 138 of the Negotiable Instruments Act were not attracted. It is further submitted that in the memo, the bank had inadvertently stated that the cheque was returned on the ground of "in sufficient funds". The learned counsel relied upon the judgments of the Supreme Court in the cases of K.P.G. Nair Vs. M/s. Jindal Menthol India Ltd. reported in **2001 ALL MR (Cri) 1206**, Monaben Ketanbhai Shah & another vs. State of Gujrat reported in **2004 ALL MR (Cri) 3170 (S.C.)** and Chaitan M. Maniar vs. State of Maharashtra & another reported in **2004 ALL MR (Cri) 2027**.

4. It is not possible to accept the submissions made by the learned counsel appearing on behalf of the applicants. The submissions made on behalf of the

petitioners will have to be decided by the trial court only after the evidence is adduced by the complainant and the same is rebutted by the applicants. In the complaint, there are several averments indicating the role played by all the accused. So far as the other submissions are concerned, essentially, these are factual aspects which will have to be decided by the trial court only after the evidence is adduced during trial. The ratio of the judgments of the Supreme Court, therefore, will not be applicable to the facts of the present case.

5. In the result, there is no merit in the submissions made by the learned Counsel appearing on behalf of the applicants. Criminal Application is therefore rejected.

6. The Trial Court, however, shall grant exemption to the applicant Nos. 2 to 5 from appearing in the trial court. The J.M.F.C., Panvel shall record the plea of the applicants through their advocate. They may be called only at the time of recording of statement under section 313. The learned counsel appearing on behalf of the applicants, however, undertake not to dispute the identity of applicant Nos. 2 to 5 during trial.

7. With the above observations, Criminal application is disposed of.

V.M. KANADE, J.